

APPEAL NO. 040880
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 22, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appealed the hearing officer's SIBs determination. The claimant responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in dispute are whether during the qualifying period for the second quarter: (1) the claimant earned less than 80% of her average weekly wage as a direct result of the impairment from her compensable injury; and (2) made a good faith effort to obtain employment commensurate with her ability to work.

With regard to the direct result criterion, the hearing officer found that the claimant's unemployment during the qualifying period for the second quarter was a direct result of her impairment from her compensable injury. See Rule 130.102(c). With regard to the good faith criterion, the hearing officer found that during the qualifying period between August 14 through October 30, 2003, the claimant was unable to work in any capacity, a narrative report specifically explained how the injury caused a total inability to work, and no other records credibly showed that the claimant could have actually returned to work. Rule 130.102(d)(4). Further, the hearing officer found that during the qualifying period between October 31 through November 12, 2003, the claimant sought work on a weekly basis. Rule 130.102(d)(5) and (e). The carrier argues that there are other records that show that the claimant had an ability to work during the qualifying period in dispute. We have held that in cases where a total inability to work is asserted and there are other records that on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject the records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work. The hearing officer still may look at the evidence and determine that it failed to show this." Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. In the present case, the hearing officer explained that Dr. B report does not actually show or establish that the claimant had any ability to work because the claimant's condition and her frequent need for medications rendered her unable to work during the qualifying period between August 14 through October 30, 2003. The hearing officer concluded that the claimant is entitled to SIBs for the second

quarter, based upon a total inability to work for most of the qualifying period, and based upon a good faith search for employment during the rest of the qualifying period.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge